TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

DRYDEN – TOMPKINS SOLAR I, LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT
(Ellis Tract)

Project Addresses:
Dryden Road
Stevenson Road
140 Dodge Road
Turkey Hill Road
Town of Dryden
Tompkins County, New York

Tax Map Numbers:
56.-5-31
57.-1-6
57.-1-7.1
67.-1-3
67.-1-7.2

Affected Taxing Jurisdictions:
Tompkins County, New York
Town of Dryden, New York
Ithaca City School District

Dated as of February 1, 2018
PAYMENT-IN-LIEU-OF-TAX AGREEMENT
(Ellis Tract)

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of February 1, 2018 (the "PILOT Agreement"), is by and between the TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly existing under the laws of the State of New York, having its offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency") and DRYDEN – TOMPKINS SOLAR I, LLC, a limited liability company duly formed and validly existing pursuant to the laws of the State of Delaware and duly authorized to conduct business in the State of New York and a wholly owned subsidiary of SUN8 PDC LLC, with a business address c/o Distributed Sun LLC, 601 13th Street NW, Suite 450 South, Washington DC 20005 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 535 of the Laws of 1971 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, pursuant to a certain Site Lease Agreement for Solar Facility, dated as of December 1, 2017 (as the same may be amended from time to time, the "Ground Lease"), by and between Cornell University (the "Ground Lessor") and the Company, the Ground Lessor leases certain real property to the Company located in the Town of Dryden, Tompkins County, New York; and

WHEREAS, the Company has submitted an application (as the same may be modified or supplemented from time to time, the "Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold interest in certain land located at Dryden Road (being tax map number 56.-5-31); Stevenson Road (being tax map numbers 57.-1-6 and 57.-1-7.1); 140 Dodge Road (being tax map number 67.-1-3); and Turkey Hill Road (being tax map number 67.-1-7.2), as the same may be further subdivided, containing in the aggregate approximately one hundred and twenty-five (125) acres after subdivision, all in the Town of Dryden, Tompkins County, New York (the "Land"); (ii) the construction on the Land of 18MWAC of community solar projects, which will include, but not be limited to, the removal of certain trees, the installation of PV modules on metal racks or tables with driven/screwed-in foundations, the installation of 15' by 20' concrete pads (for the installation of electrical equipment to connect to the utility), and the installation of one (1) or more seven-foot (7 ft) agricultural fences and internal project roads (collectively, the "Improvements"); and (iii) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other items of tangible personal property (the "Equipment"; and, collectively with the Land and the Improvements, the "Facility"); all to generate clean electricity to be sold to residential and commercial customers; and
WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a sub-leasehold interest in the Land, Improvements, Equipment and personal property constituting the Facility pursuant to a certain Sublease Agreement, dated as of February 1, 2018 (the "Sublease Agreement") and thereafter to sub-sublease said Land, Improvements, Equipment and personal property back to the Company pursuant to the terms and conditions of a certain Sub-Leaseback Agreement, dated as of February 1, 2018 (the "Sub-Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments-in-lieu-of-taxes by the Company for the benefit of Tompkins County, New York (the "County"), the Town of Dryden, New York (the "Town") and the Ithaca City School District (the "School District" and, collectively with the County and the Town, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section I.1 A. Subject to the completion and filing by the taxable status date March 1, 2018 (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") and Section 874 of the Act, the Facility shall be exempt from Real Estate Taxes (as hereinafter defined) commencing with the 2018-19 School District tax year, the 2019 County tax year, and the 2019 Town tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, the Town and the School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application. Notwithstanding anything contained herein or in the Sub-Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; and (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes.
B. Agreement to Make Payments. As long as the Facility is owned by or subleased to the Agency, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before on or before February 1 of each year for County, Town and School District taxes (the "Payment Date"), commencing on February 1, 2019, an amount equal to the Total Tax Payment, as defined on Schedule A attached hereto. The Company shall make all such Total Tax Payments in the amounts and on the dates specified above, whether or not any such Total Tax Payment is billed by the Agency, the Affected Tax Jurisdictions, or any other party.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

C. Any ad valorem taxes (other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements) that the Company is required to pay to the Affected Tax Jurisdictions, the Ground Lessor, or the Agency with respect to the period between the date of this PILOT Agreement and the commencement of benefits under Section 1.5 hereof, shall be credited against amounts otherwise payable by the Company in PILOT Year 1 of this PILOT Agreement, as shown on Schedule A attached hereto.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency’s involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total Tax Payments among the Affected Tax Jurisdictions, the Company shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and Town purposes, the tax rates used to determine the allocation of the Total Tax Payment shall be the tax rates relating to the calendar year which includes the Payment Date. For School District purposes, the tax rates used to determine the Total Tax Payment shall be the rate relating to the School District year which includes the Payment Date.

1.4 Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement which increases the size of the Facility beyond that described in the third WHEREAS Clause to this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total Tax Payment. The Agency shall notify the Company of any proposed increase in the Total Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Addition made by the
Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Total Tax Payment until a different Total Tax Payment shall be established. If a lesser Total Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Total Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Total Tax Payment(s). An increase in the capacity of the Facility beyond 18 MW\textsubscript{AC} shall not be considered a Future Addition, however, in such an event, the amount of the Total Tax Payment shall be increased as provided in Schedule A attached hereto.

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2018-19 School District tax year through the 2047-2048 School District tax year, (ii) the 2019 County tax year through the 2048 County tax year, and (iii) the 2019 Town tax year through the 2048 Town tax year. This PILOT Agreement shall expire on December 31, 2048; provided, however, the Company shall pay (i) the 2048-49 School District tax bill, (ii) the 2049 County tax bill, and (iii) 2049 Town tax bill on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility while this PILOT Agreement is in effect which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II – Payment in Lieu of Mortgage Recording Tax.

2.1 The Company agrees to pay on the date of execution and delivery by the Agency of any mortgage on the Facility, as a payment in lieu of mortgage recording tax, a total amount of three quarters of one percent (0.0075%) of the maximum amount secured by such mortgage, except to the extent such amount reflects repayment of prior indebtedness, of which three-fourths (3/4) of such payment shall be allocated to the County and one-fourth (1/4) of such payment shall be allocated to the Town, the Village of Dryden, New York and the Village of Freeville, New York, using the last tax rate utilized for the levy of taxes by the Town, the Village of Dryden, New York and the Village of Freeville, New York.

Section III - Special District Charges, Special Assessments and other charges.

3.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.
Section IV - Transfer of Facility.

4.1 In the event that the Facility is transferred from the Agency to the Company (the sublease/sub-sub-leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section V - Assessment Challenges.

5.1 The Company shall not have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall not be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall not be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

5.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

5.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section VI - Changes in Law.

6.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VII - Events of Default.

7.1 The following shall constitute "Events of Default" hereunder: (a) the failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date") or (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; (b) the occurrence and continuance of any events of default under the Sub-Leaseback
Agreement after any applicable cure periods; and (c) the determination of the Agency to suspend, discontinue and/or recapture any financial assistance previously conferred to the Company by the Agency in accordance with the Agency's Project Recapture Policy in effect as of the date hereof. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity or under the Agency's Project Recapture Policy in effect as of the date hereof, the Agency and/or the Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the Act and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

7.2 If payments pursuant to Section I herein are not made by the Delinquency Date, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest as determined hereunder or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VIII - Assignment.

8.1 No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section IX - Miscellaneous.

9.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which together shall constitute a single instrument.

9.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:
To the Agency: Tompkins County Industrial Development Agency
401 East State Street, Suite 402B
Ithaca, New York 14850
Attn.: Administrative Director

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn.: Russell E. Gaenzle, Esq.

To the Company: Dryden – Tompkins Solar I, LLC
c/o Distributed Sun LLC
601 13th Street NW, Suite 450 South
Washington DC 20005
Attn.: Bharath Srinivasan

With a copy to: Hancock Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Attn.: Richard Cook, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

9.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Tompkins County, New York.

9.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. No member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

[The Balance of This Page Intentionally Left Blank]
IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: [Signature]
Name: Heather McDaniel
Title: Administrative Director

DRYDEN – TOMPKINS SOLAR I, LLC

By: [Signature]
Name: Jeff Weiss
Title: Co-Manager
IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: ______________________
Name: Heather McDaniel
Title: Administrative Director

DRYDEN – TOMPKINS SOLAR I, LLC

By: ______________________
Name: Matt Weiss
Title: Co-Manager
SCHEDULE A-1

During the term of this PILOT Agreement the Company agrees to make a "Total Tax Payment" (i) for the first PILOT Year, in an amount equal to Six Thousand and No/100 Dollars ($6,000.00) per MWAC (the "Per MWAC Charge") and (ii) for each subsequent PILOT Year, in an amount equal to the immediate prior Per MWAC Charge increased by two percent (2%) per MWAC. After the thirtieth (30th) PILOT Year, the Facility shall be subject to taxation by the Affected Tax Jurisdictions.